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EXTRAORDINARY

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भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 16 जनवरी, 2013

आ.अ. 3(अ).—लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 के अनुसरण में भारत निर्वाचन आयोग, 9-बेल्लारी (अ.ज.जा.) संसदीय निर्वाचन क्षेत्र तथा अन्यो से लोक सभा सदस्य श्रीमती जे. शान्था एवं अन्य के निर्वाचन को चुनौती देते हुए श्री एम. चन्द्रगौडा द्वारा दायर की गई, कर्नाटक उच्च न्यायालय की निर्वाचन याचिका सं. 2009 का सं. 4 में दिनांक 10 दिसम्बर, 2012 के आदेश को एतद्वारा प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/कर्ना.—लोकसभा/(4/2009)/2012]

आदेश से,

आर. के. श्रीवास्तव, प्रधान सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 16th January, 2013

O.N. 3(E).—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 10th December, 2012 of the High Court of Karnataka in Election Petition No 4 of 2009 filed by Shri M. Chandregouda challenging the election of Smt. J. Shantha & Others, a member of the Lok Sabha from 9-Bellary (ST) Parliamentary Constituency & others.

IN THE HIGH COURT OF KARNATAKA AT  
BANGALORE

DATED THIS THE 10th DAY OF DECEMBER, 2012

BEFORE

THE HON'BLE MR. JUSTICE H BILLAPPA

ELECTION PETITION No. 4/2009

BETWEEN:

Sri.M. Chandregouda,  
S/o.Sri.Narashimha Reddy,  
Aged about 63 Years,  
No.215, 'Matrukrupa',  
Neharu Colony, 4th Cross,  
Basaveswara Nagar,  
Bellary District.

... Petitioner

(By Sri.H.Kantha Raja, Adv. a/w Sri.Y.H.Vijay Kumar &  
Sri.Mohammed Rizwan Ahamed, Advs.)

AND:

1. Smt. J. Shantha,  
W/o.Sri.B.Nagaraju,  
Aged about 35 years,  
Devinagar II Cross,  
Bellary-583 104.
2. Sri. N.Y. Hanumanthappa,  
S/o. Late N. Yellappa,  
Aged about 69 years,  
No. 270, Rampura, Molakalmuru Taluk,  
Chitradurga District-577 535.

3. Sri.T.Nagendra,  
S/o. Sri P.Jambanna,  
Aged about 45 years,  
R/at 16/92, Valmiki Bhavan,  
Opp. Harihara Bhajana Mandira,  
Bellary-583 101,  
Bellary District.
4. Sri. Chowdappa,  
S/o. Sri.Bheemappa,  
Aged about 52 years,  
R/at No.19, Karadidurga,  
Huchhanggi Durga Post,  
Harapanahalli Taluk,  
Davanagere District,  
Davanagere-577 001.
5. Sri.A. Ramanjappa,  
S/o.Sri.A.Thippanna,  
Aged about 58 years,  
R/at. 35/2, Jamadandi Compound,  
Kappagal Road,  
Bellary-583 101,  
Bellary District.
6. Sri. B. Ramaiah,  
S/o. Sri. P. Hulagappa,  
Aged about 61 years,  
R/at No. 29, KHB Colony, Moka Road,  
Gandhinagar,  
Bellary-583 101,  
Bellary District.
7. Sri. D.Ganganna,  
S/o. Sri.Devappa,  
Aged about 48 years,  
R/at.183, Rampura-Post,  
Molakalmuru Taluk,  
Chitradurga District-577 535.      ...Respondents

(By Sri.B. M. Arun, Adv. for R-1,  
Sri. Krishna S.Dixit, Adv. For Election Commission of India)

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This Election Petition is filed under Section 81 of the Representation of People Act, 1951 by the petitioner -Sri.M.Chandre Gowda who is an elector in 9-Bellary (ST) parliamentary constituency, and also an election agent of respondent no.2, election held on 23-4-2009 alongwith his advocate Sri.H.Kantharaja praying to declare that the election of the respondent no.1/returned candidate as per annexure-2 and 3 to be void as the respondent no. 1 / returned candidate is not qualified to contest in a constituency reserved for the schedule tribes etc.,

This petition coming on for Preliminary Hearing this day, the Court made the following :

#### ORDER

This Court by its Order dated 11-6-2012 had allowed E.P.No.4/2009 in part directing recounting of votes. The

election of the 1st respondent to 9 Bellary (ST) Parliamentary Constituency was set aside. The Returning Officer of 9, Bellary (ST) Parliamentary Constituency was directed to re-count the votes of 9, Bellary (ST) Parliamentary Constituency and declare the result.

2. The 1st respondent challenged the order passed by this Court in E.P.No. 4/2009 before the Hon'ble Supreme Court in Civil Appeal No. 4824/2012. The Hon'ble Supreme Court by its Order dated 16-8-2012 has modified the Order passed by this Court and has directed to pass final order based on the declaration of result of recounting by the Returning Officer. The counsel for the Election Commission of India has submitted report of re-counting.

3. The petitioner has filed I.A.No. 2/2012 praying as follows;

(i) stay the confirmation of the result of the recounting, held in Bellary, 9 (ST) Parliamentary Constituency, Bellary, Bellary District on 15-9-2012.

(ii) Declare the results, after excluding/discarding the control units that do not tally with the entries in Form No.17 C Part I and Part II, in conformity with para No.214 and 218 of the Judgment dated 11-6-2012.

(iii) Pass such other order or orders as this Hon'ble Court may deem fit and proper, to pass in the present facts and circumstances of the case.

4. The 1st respondent has opposed the application.

5. The petitioner has filed objections to the report of recounting. It is contended that recounting has not been done as directed by this Court and it does not conform to the direction of this Court.

6. The learned counsel for the petitioner contended that the recounting has not been done as directed by this Court. He also submitted that the Control units in respect of which defects were noticed by this Court have not been excluded. Further he submitted that in respect of three EVMs bearing Nos. D30313, C45271 and C40048 the paper seal was intact and they were not counted earlier and therefore, they should have been excluded. He therefore submitted that the recounting has not been done as directed by this Court and therefore, it cannot be accepted.

7. As against this, the learned counsel for the 1st respondent submitted that the recounting has been done as directed by this Court and also the Hon'ble Supreme Court.

Further he submitted that all precautions have been taken to verify the defects noticed by this Court and thereafter, recounting has been done and therefore, it does not call for interference.

8. I have carefully considered the submissions made by the learned counsel for the parties and also perused the report of recounting.

9. The report of recounting shows that precautions have been taken to verify the defects noticed by this Court. The documents produced clearly show that precautions have been taken to verify the defects noticed by this Court in respect of Control unit numbers, Form No.17 C Part-I and Part-II. After verifying the defects referring to randomized list and 17-A register and identifying the control unit numbers, recounting has been done. In respect of three EVMs endorsement has been issued explaining how the seal was broken earlier. The number of votes secured by the candidates remains unaltered. There is no change. The 1st respondent has secured highest number of votes i.e., 4,02,213. The 2nd respondent has secured,

3,99,970 votes. It is clear, the 1st respondent has secured highest number of votes. Therefore, the election of 1st respondent to 9, Bellary (ST) Parliamentary constituency does not call for interference.

10. Accordingly, E.P.4/2009 is hereby dismissed.

11. I.A.2/2012 also dismissed.

Sd/-  
JUDGE

[No.82/KT-HP/(4/2009)/2012-]

By Order,

R. K. SRIVASTAVA, Principal Secy.